IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 102 OF 1997.

1. Smt. Eufemia Clara Pereira,
   resident of H.No.242(4),
   Sirvodem, Salcete, Goa.

2. Shri Asterio B.S.P. Barretto,
   Navelim, Salcete, Goa
   (since deceased).

3. Shri Blaise Barretto,
   resident Near H.No.242(4),
   Sirvodem, Navelim,
   Salcete, Goa. ... Appellants.

VERSUS

1. Shri Minguel Luis Gomes,
   r/o Sirvodem, Navelim,
   Salcete, Goa.

2. Shri Shaikh Mahibur Nazir,
   r/o Daud Building, Pedda,
   Margao, Goa.

3. Shri R.B. Naik,
   r/o Colmorod, Navelim Road,
   Margao, Goa. ... Respondents.

Shri P.K. Gude, Advocate for the Appellants.

CORAM: N.A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 31.03.2004
DATE OF PRONOUNCIN THE JUDGMENT: 28.04.2004

J U D G M E N T:

The defendants Nos.1 and 2 in S.C.S. No.54/80 have filed the present appeal against the Judgment and Decree dated 30.10.1996 of the learned Civil Judge, Senior Division, Margao.

2. The plaintiff in the said S.C.S. No.54/80 and the said defendants had entered into an agreement dated 13.3.79 for the sale of Blocks No.3 and 4 constructed by them in Plot No.2 in the property known as "Sirvodem" situated at Sirvodem, Navelim. The relevant Clauses of the said agreement were as follows:

1. The said two Blocks bearing Nos.3 and 4 with rustic part of 3 mt. on the northern side and 3,50 mts on the Eastern side shall be sold free from any encumbrances whatsoever for the price of Rs.45,000/-.

2. The final sale shall be made till within two months from today and as earnest money and part payment the First Party acknowledges to have received from the Second Party a sum of Rupees Thirty Three Thousand only for which they give full discharge for all legal purposes and the balance amount of Rs.12,000/- shall be paid by the Second Party on the day of final sale.

3. If the Sale does not materialise due to fault attributable to the First Party they shall pay double the amount of earnest money that is Rs.66,000/- to the Second Party and if the Sale failed to

materialise due to fault attributable to the Second Party the Second Party shall forfeit the earnest money paid today in favour of the First Party, one or the other thing as compensation towards the loss and damages.

3. The First party were the said defendants. The second party was the plaintiff.

4. After requests were made by the plaintiff and talks for settlement failed, the plaintiff filed the suit with the following reliefs:-

(a) The said defendants be directed to execute a final sale deed of the said Blocks Nos.3 and 4 with rustic part of 3 mtrs. on the northern side and 3.5 mtrs. on the eastern side as per agreement dated 13.3.1979.

(aa) Alternatively the defendants be directed to execute the sale deed as the N.O.C. issued by the plaintiff and Development Authority and to adjust the cost against the balance amount due by the plaintiff to the defendants or in such other way as deemed fit and proper.

(b) The defendants No.1 and 2 be directed to

pay Rs.4875/- being the rent of Blocks No.3 and 4 received by them from June, 1979 till April, 1980 to the plaintiff;

(c) For a decree to pay and receive the rent of Blocks No.3 and 4 by the plaintiff from the defendants;

(d) Defendants No.3 and 4 be directed to deposit the rent pending the decision in the suit.

5. The learned Addl. Civil Judge, Senior Division, has decreed the suit filed by the plaintiff in that the learned Addl. Civil Judge S.D., has directed the defendants to execute the Sale Deed after obtaining fresh N.O.C. from the S.P.D.A. Although all the prayers sought for by the plaintiff have not been granted by the learned Addl. Civil Judge S.D.,the plaintiff has not filed any appeal or cross objections against the Judgment and Decree nor has contested the present appeal.

6. Shri P.K. Gude, the learned Advocate for the said defendants, has submitted that the case of the plaintiff was not one for specific performance and that the learned Addl. Civil Judge S.D. has granted only prayer (a) of the plaint. Shri Gude has next

submitted that this was a case where in terms of clause 3 of the said agreement, the said defendants could have been ordered to pay double the amount of earnest money i.e. Rs.66,000/-. Shri Gude has further submitted that the case at hand is also a case which the Court cannot supervise the agreement between the parties. Learned Advocate Shri Gude has further submitted that the default in non-execution of the sale deed was on the part of the plaintiff. Shri Gude has referred to Section 14 of the Specific Relief Act 1963 and placed reliance on the decision reported in **Ram Awadh (dead) by LRs. and others v. Achhaibar Dubey and another** (A.I.R. 2000 S.C. 860).

7. Section 14 of the Specific Relief Act 1963 deals with contracts which cannot be specifically enforced and sub-section (1) thereof provides that the following contracts cannot be specifically enforced namely:-

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) ...

(c) ...

(d) ...

8. While considering suits for specific

performance Courts always consider that the jurisdiction to decree specific performance is discretionary and the courts are not bound to grant such a relief mainly because it is lawful to do so. The expression "adequate relief" in clause (a) of sub-section (1) of Section 14 of the Specific Relief Act, 1963, is not capable of precise definition and they are not defined in the said Act or any other law and generally it is the common sense view which is resorted to as regards the said expression. It connotes a relief which is considered sufficient, but sometimes the question arises as to by whom it is considered adequate, by the plaintiff or by the defendant or by the Court and normally if the relief is considered sufficient by one party to a dispute, it is not considered so by the other party and in such controversies, it is the court who is called upon to determine the adequacy or inadequacy of the relief claimed, contested and given.

9. Admittedly, the agreement for sale dated 13.3.1979 went into rough weather after the parties were advised that before the sale deed could be executed, a N.O.C. from the S.P.D.A.was required to be obtained. Such N.O.C. was already obtained by the defendant no.1 and the same has been produced at Exh.D-1. There is no dispute that the said N.O.C.

was sought by the plaintiff himself though in the name of defendant No.1 and inspite of that the said N.O.C. has been given by the S.P.D.A. only for the transfer of the said two tenements without any land being part of it which otherwise was not agreed to by both the parties. Inspite of the said N.O.C. having been given by the said S.P.D.A. the learned trial court has directed that the defendants obtain a fresh N.O.C. from the said S.P.D.A. It is not anybody's case in case a fresh N.O.C. is applied for that the S.P.D.A. will give it in some other form than already given by their said letter dated 8.8.1979. Admittedly also, after the receipt of the said letter, the said defendants called upon the plaintiff by letter dated 18.8.79 whether he was willing to execute the sale deed strictly in terms of the said no objection given by S.P.D.A. within a period of 5 days, but the plaintiff did not react to the said letter. Now the plaintiff has taken a stand that he is prepared to execute the sale deed provided the market value of the land which is sought to be excluded by virtue of the said N.O.C. is deducted to which the defendants are not agreeable. At the same time the plaintiff has stated that he is prepared to pay the price as per the agreement and he is willing to perform the terms and conditions of the said agreement. As far as the agreed price is concerned, there is also no dispute

that the plaintiff has paid Rs.33,000/- out of the agreed price of Rs.45,000/-. One does not know as to who will assess the market value of the land now sought to be excluded and whether it is the defendants who will have to pay to the plaintiff further amount before the sale deed is executed between both the parties. It is therefore obvious that the agreement itself has become unenforceable because of the inability of both the parties to obtain the necessary N.O.C. from the S.P.D.A. as required to execute the sale deed in terms of the said agreement. It is well known principle that the Courts will not enforce the specific performance of those contracts for the purpose of which sanction, assent or permission for action of a third person is needed. In the case at hand, the S.P.D.A. could be considered as a third person whose N.O.C. is required for the execution of the sale deed between both the parties and the said N.O.C. has not been forthcoming as desired, particularly by the plaintiff.

10. It appears that the parties did contemplate such a situation and probably for that reason incorporated in their agreement the said clause 3 which at the cost of repetition could be reproduced below :-

" 3. If the Sale does not materialise due to fault attributable to the First Party they shall pay double the amount of earnest money that is Rs.66,000/- to the Second Party and if the Sale failed to materialise due to fault attributable to the Second Party the Second Party shall forfeit the earnest money paid today in favour of the First Party, one or the other thing as compensation towards the loss and damages. "

11. But in the case at hand, it cannot be said that there has been any fault on the part of the defendants because admittedly it is the S.P.D.A. who has not given the said N.O.C. as required by the plaintiff. In such a situation, the only equitable relief which could be granted in favour of the plaintiff is that the defendants could be directed to execute the sale deed to which the Defendants agree but in terms of the said N.O.C. or in the alternative the Defendants could be directed to refund money i.e. Rs.33,000/- paid by the plaintiff to the defendants and the incidental expenses incurred by the plaintiff of Rs.440/- with pending and future interest at the rate of 10% from 13.5.1979 until payment, at the option of the plaintiff.

12. In the above view of the matter, I am inclined

to allow the appeal and set aside the Judgment/Decree of the learned Trial Court dated 30.10.96. As a result, the defendants are hereby directed to execute the sale deed in favour of the plaintiff as stipulated in the agreement of sale dated 13.3.79 but in accordance with the said N.O.C. issued by the S.P.D.A. dated 8th August, 1979 at the option of the plaintiff. In the alternative, the plaintiff shall have the option to recover from the defendants the said sum of Rs.33,000/- plus Rs.440/- being the expenditure incurred by the plaintiff in connection with the execution of the sale deed with pending and future interest at the rate of 10% from the date of the suit until payment. No order as to costs.

N.A. BRITTO, J.

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